IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.229 of 2006

Date of decision : July 25, 2007

Naresh **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Vijay Pandit, Advocate.

Accused-appellant in custody of HC Tejveer Singh No.255 and HHC Rajinder Singh No.795, Police Lines Nahan.

For the Respondent : Mr. Ashutosh Burathoki, Additional Advocate General.

Surjit Singh, Judge(Oral)

Accused-appellant Naresh has been produced in custody of HC Tejveer Singh No.255 and HHC Rajinder Singh No.795 of Police Lines Nahan.

2. Heard and gone through the record.

3. Appellant has been convicted of an offence under Section 20(B) of the Narcotic Drugs and Psychotropic Substances Act, for allegedly being in exclusive and conscious possession of 500 grams of *Charas* and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.30,000/-, in default of payment of fine to undergo simple imprisonment for a further period of one year.

Whether reporters of the local papers may be allowed to see the judgment?

4. The only submission that has been made on behalf of the appellant-convict is that the appellant was sent up for trial for possessing *Charas* and the *Charas*, as per definition contained in sub-clause (a) of Clause (iii) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, means resin, in whatever form, whether crude or purified, obtained from cannabis plant and also includes concentrated preparation known as Hashish oil or liquid Hashish. It has been submitted that in the present case, as per report of the Chemical Examiner, the entire sample stuff was not resin or say *Charas*, but only a part of it, to the extent of 28.54 per cent, was resin and, hence, the appellant cannot be said to be in possession of 500 grams of *Charas*. He says that what was in possession of the appellant was not whole *Charas* but something which included *Charas* (resin) to the extent of 28.54 per cent only and the rest of the stuff was some unknown substance about which report of the Chemical Examiner is silent. He has taken me through the report of the Chemical Examiner, per which the sample contained contents of *Charas.*

5. I find myself in agreement with the aforesaid submission of the learned counsel for the appellant. His submission is supported by the judgment, delivered by a Division Bench of this Court, in *Dharam Pal versus State of Himachal Pradesh and another appeal (Criminal Appeal Nos.491 & 510 of 2003),* decided on 15.5.2007. In the aforesaid case, it has been held that only the resin content of the stuff is *Charas* and that in the absence of the report of the Chemical Examiner about the rest of the contents of the stuff, the

quantity of the *Charas*, based on the percentage of the resin found therein by the Chemical Examiner, is required to be worked out and the appellant-accused is to be held responsible for possessing *Charas* only to the extent, the stuff contained the resin content in it.

6. As noticed hereinabove, the total quantity of stuff recovered from the appellant was 500 grams. The Chemical Examiner has found resin content in it to the extent of 28.54 per cent. That means the *Charas*/resin content in the recovered stuff was 142.70 grams. This quantity is less than the commercial quantity, as specified vide Notification No. S.O. 1055(E), dated 19th October, 2001, issued by the Central Government, even though more than the upper limit of the small quantity, i.e., 100 grams, fixed by the same Notification. The offence under Section 20(B) is punishable with imprisonment that may extend to ten years and with fine which may extend to Rs.1,00,000/-. Offence for possessing small quantity, i.e., upto 100 grams is punishable under Section 20(A) of the Act and the punishment is imprisonment that may extend upto six months and fine that may extend upto rupees ten thousand. In this case, the quantity of *Charas* is 142.70 grams or say only 42.70 grams in excess of the limit of small quantity. Looking to the quantity, I feel that the ends of justice would be met in case his sentence is reduced from four years rigorous imprisonment and a fine of Rs.30,000/- to one year rigorous imprisonment and a fine of Rs.20,000/-, in default of payment of fine simple imprisonment for a further period of three months.

7. The appellant has been in custody since 30.3.2006. Thus, he has been in detention for a period longer than the sentence of substantive imprisonment awarded by this Court in appeal. In fact he has undergone imprisonment for a period more than the term of substantive imprisonment awarded hereby plus the imprisonment awarded in default of payment of fine. Therefore, it is ordered that he be set at liberty forthwith, in case his detention is not required in any other case.

8. Appeal stands disposed of.

A copy of this judgment be given to the accused-appellant free of cost.

July 25, 2007(sd) **(Surjit Singh), J**